

## AGING, DEPARTMENT ON[17]

### Adopted and Filed

Pursuant to the authority of Iowa Code sections 231.14, 231.23 and 17A.3, the Department on Aging hereby amends Chapter 6, “Area Agency on Aging Planning and Administration,” Iowa Administrative Code.

These amendments incorporate the following particulars:

1. The Department on Aging will be able to require area plans for a period of two years and up to four years. Currently, area agencies on aging are required to submit four-year plans.
2. Area agencies on aging will be allowed flexibility to determine the extent to which a full-time director is necessary. Currently, each area agency on aging is required to have a full-time director.
3. The Department on Aging will not need to dedesignate an area agency on aging for its failure to meet service standards. Dedesignation is still an option under rule 17—4.6(231), but this change will allow flexibility in response to deficiencies.
4. Rule 17—6.14(231) related to priority service expenditures is rescinded and has been incorporated in new 17—Chapter 5 (see **ARC 0743C** herein). Subrule 6.14(2) pertaining to hearings related to priority service expenditures has been incorporated into subrule 6.2(7).
5. In Item 6, language in the rule pertaining to entrepreneurial activities was found to be inconsistent and unenforceable and is stricken. Rescission of subrules 6.15(3) to 6.15(5) will clarify for area agencies on aging what is necessary to perform entrepreneurial activities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 6, 2013, as **ARC 0640C**. The Department received no written comments. The only change from the Notice of Intended Action was the addition of new Item 5 to correct cross references affected by renumbering.

The Commission on Aging adopted these amendments on April 26, 2013.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 231.

These amendments will become effective on June 19, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 17—6.2(231) as follows:

#### **17—6.2(231) Area plan.**

**6.2(1) Area plan.** Each AAA shall develop and administer an area plan.

**6.2(2) Duration and format of the area plan.**

*a.* The area plan shall be for ~~the~~ a minimum of a two-year and a maximum of a four-year period specified by the department, with annual updates.

*b.* Uniform area plan format. All AAA shall submit an area plan or plan amendment to the department in accordance with the uniform area plan format, other instructions issued by the department, this chapter, and the federal Act.

**6.2(3) and 6.2(4)** No change.

**6.2(5) Plan content.** The area plan shall, at a minimum, contain the following information:

*a.* Assurance that the AAA agrees to abide by the requirements of the federal Act and all other applicable laws and rules; and

*b.* Objectives and budget for each year of the designated ~~four-year~~ period and methods to obtain those objectives; and

*c.* Client estimates. Area agencies shall estimate the number of older individuals with the characteristics identified in Form 3 A 1 of an IAPI.

**6.2(6)** No change.

**6.2(7)** *Procedures for area plans, plan amendments and revisions.*

*a. Public hearing(s).* The AAA shall hold at least one public hearing on the area plan and all plan amendments as required in this chapter. Priority services shall appear as a distinct agenda item for any hearing.

(1) The public hearing(s) shall be held prior to submission of the area plan or amendment(s) at a time which permits older individuals, public officials, and other interested parties reasonable opportunity to participate. The hearing(s) shall be held at a barrier-free, fully accessible location.

(2) The AAA shall advertise the hearing by sending notice to all known groups of older individuals, PSA public officials, and other interested parties. The AAA shall also publish a notice in the official newspapers as designated for each county served by the PSA. The notice shall include the time, date, and location of the public hearing.

(3) The hearing on the area plan shall include the priority services and priority services requirement as a distinct agenda item with a specific time set for the beginning of that portion of the hearing.

*b. Review and comment by the advisory council.*

(1) The AAA shall submit the area plan, amendments and revisions for review and comment to the AAA advisory council.

(2) The official representative of the AAA shall sign the plan, amendment or revision to signify that the AAA has completed all of the requirements of this chapter. The AAA shall then submit the area plan, amendment or revision to the department for review.

**6.2(8) to 6.2(10)** No change.

ITEM 2. Amend rule 17—6.3(231) as follows:

**17—6.3(231) Area agency administration.**

**6.3(1)** ~~Full-time director~~ Director. The AAA shall employ a qualified ~~full-time~~ director and may employ other staff as necessary to manage and monitor the area plan.

**6.3(2)** *Director's responsibility.* It is the responsibility of the AAA director to:

*a.* Ensure that all AAA duties as outlined in the federal Act, state law, this chapter and other rules promulgated by any agency having jurisdiction are performed;

*b.* Develop the area plan;

*c.* Implement organizational operations;

*d.* Budget for services and operations;

*e.* Coordinate implementation of services; and

*f.* Monitor and evaluate services.

**6.3(3) to 6.3(5)** No change.

ITEM 3. Rescind rules **17—6.13(231)** and **17—6.14(231)**.

ITEM 4. Renumber rules **17—6.15(231)** to **17—6.18(231)** as **17—6.13(231)** to **17—6.16(231)**.

ITEM 5. Amend renumbered subrules 6.13(1) and 6.13(2) as follows:

**6.13(1)** An AAA shall request a waiver from the priority service expenditures in rule 17—subrule 5.3(3) 5.5(231) if it does not propose sufficient funding to allow older individuals to have convenient access to a service. The waiver request shall be submitted with the plan or plan amendment pursuant to applicable procedures under 17—Chapter 11.

**6.13(2)** The commission, in approving an area plan or a plan amendment, may, upon recommendation of the director, waive the requirement of rule ~~17—6.14(231)~~ 5.5(231) for any category of service for which the AAA demonstrates the following:

*a.* and *b.* No change.

ITEM 6. Amend renumbered rule 17—6.15(231) as follows:

**17—6.15(231) Entrepreneurial activities of AAA.** An AAA considering entrepreneurial activities must carefully examine the activity to ensure compatibility with its designation as an AAA. The following shall apply to all AAA, unless otherwise prohibited by statute, rule or order:

**6.15(1) *Demonstrated need—use of funds.*** An AAA may engage in entrepreneurial activities if the activity is in response to a demonstrated need and the funds raised by such activities are used for one of the following purposes:

- a. To further extend services and opportunities for older individuals; or
- b. To fund new services and opportunities for older individuals provided that these services or opportunities are compatible with the AAA functions and goals.

**6.15(2) *Restrictions.*** ~~An AAA shall not use funds received from the department in connection with entrepreneurial activities.~~ The following restrictions shall apply to an AAA's engagement in entrepreneurial activities:

- a. Entrepreneurial activities shall not be undertaken until they have been reviewed by the advisory council and approved by the AAA governing board.
- b. An AAA that engages in entrepreneurial activities shall not create the impression that the activity is being carried on under governmental authority.
- c. Funds received as a result of entrepreneurial activities shall be monitored and accounted for according to generally accepted accounting and auditing practices commensurate with the activities.
- d. Entrepreneurial activities shall be pursued only if the duties and responsibilities required of AAA in this chapter are consistently provided by the AAA in a capable manner.
- e. ~~Entrepreneurial activities shall benefit all eligible persons in the PSA, particularly older individuals in the greatest economic and social need and low-income minority persons.~~ Entrepreneurial activities pursued by an AAA and groups or organizations funded by an AAA shall not have, nor present the appearance of, a conflict of interest.
- f. Entrepreneurial activities shall not utilize funds received from the department for direct costs.

**6.15(3) *Department review.***

- a. ~~An AAA shall inform the department in writing not less than 160 calendar days prior to the initiation of an entrepreneurial activity of an ongoing nature. The notification shall describe the proposed activity, proposed source of funds, and the needs being addressed.~~
- b. ~~The department shall respond in writing within 30 calendar days to acknowledge receipt of the information, request clarification, or request a delay in implementation. For informational purposes, the department shall provide a copy of the response to the commission.~~
- c. ~~An AAA that receives no response from the department within 30 days may assume that no additional submission of information is required.~~
- d. ~~If unresolved issues remain after 60 calendar days of receipt of the information, the commission will be informed of those issues at the next commission meeting.~~

**6.15(4) *Commission or department action.*** An AAA contracting for entrepreneurial activities shall:

- a. ~~Provide the contract to the department for review prior to signing; and~~
- b. ~~Include the activities in the area plan, plan amendments or revisions; and~~
- c. ~~Require a minimum payment from the contractor to fully cover all costs of the activity, including overhead and administrative costs, to eliminate the possibility of use of Title III funds.~~

**6.15(5) *Community interest.***

- a. ~~Entrepreneurial activities pursued by an AAA and groups or organizations funded by an AAA shall not have, nor present appearance of, conflict of interest.~~

~~b. An AAA shall work cooperatively with community leaders, groups and organizations in order to participate in entrepreneurial activities.~~

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.